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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/549,257

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Gilles Elliot

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EXAMINER

FORD, JOHN K

ART UNIT

PAPER NUMBER

3784

MAIL DATE

DELIVERY MODE

06/08/2011

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/549,257	Applicant(s) ELLIOT ET AL.	
	Examiner JOHN FORD	Art Unit 3784	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 March 2011.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27,29 and 30 is/are pending in the application.
- 4a) Of the above claim(s) 3,9,13-21,23-27 and 29 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-8,10-12,22 and 30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Applicant's response of March 24, 2011 has been carefully considered.

The examiner notes at the onset that as of March 24, 2011, applicant has reported no further developments in the on-going Opposition Proceedings in Europe in the corresponding granted European application. The examiner believes that the resolution of the issues in the on-going Opposition Proceedings in Europe will have enormous impact on the issues raised here given the nearly identical claims. Please continue to report new developments as soon as they occur with documents and translations that will allow the current examiner to meaningfully understand what has transpired there.

As stated in the March 24, 2011 response, none of the claims have been amended. Essentially, applicant's response March 24, 2011 response is a request for reconsideration.

The previous office action is reproduced, verbatim, below and applicant's comments in the March 24, 2011 are addressed below as well.

Applicant's response of 07 September 2010 has been carefully considered. All of the issues pertaining to the previously submitted IDS statements have been resolved. With respect to the on-going Opposition Proceedings in Europe the examiner trusts that US counsel will submit the decision by the EPO judges as soon as it is available. The

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examiner has translations of both the original opposition by Behr as well as the response to that opposition by Valeo.

Applicant's election of Species I, Figures 1-7, with claims 1, 2, 4-8, 10-12, 22 and 30 identified as readable, without traverse, is acknowledged again.

In response to the examiner's question to applicant as to whether the combination of a motor vehicle and an air conditioner was being claimed or just the air conditioner, *per se*, counsel (June 8, 2009 response, at page 11/14) has stated that a "vehicle" is not part of the claimed combination. The examination proceeds on that basis. All references in the claims to vehicle structure are not extended significant patentable weight because according to applicant's representations they are not structural limitations on the claims. Where mentioned in the claims they are interpreted to be simply matters of an intended use and are not part of the claimed combination. Apparently the same claim interpretation is being applied in the Opposition as is evident when reading the rejections put forth by the Opposer (i.e. the vehicle is not deemed part of the claimed combination).

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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Claims 1, 2, 4-8, 10-12, 22 and 30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 1 and 30, the phrase "grouped substantially at the same horizontal level" is deemed a relative term which renders these claim indefinite. The term "grouped substantially at the same horizontal level" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. As pointed out on page 3 of the translation of the Behr Opposition "there are considerable deviations of at least parts of the individual groups from the common horizontal level" These deviations in the disclosed levels of the modules depicted in applicant's Figure 1, for example, make it uncertain to one of ordinary skill in the art how much of a deviation in the horizontal level of the respective modules would be tolerated and still be within the subject matter of the claim or outside of the subject matter of the claim.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Applicant's partial translation of the Opposition filed by Behr in the EPO has been received and is appreciated.

The following rejections all make reference to the Behr opposition in the EPO and the translation of that opposition is incorporated here by reference to explain each of these rejections. While US counsel has previously argued that these rejections are do not comply with US practice because the standards of inventive step under the European standard may be different than the standard of obviousness under US practice, the examiner believes that the argument is a bit hyper-technical. When one actually reads the translation of the opposition it is abundantly clear both under a European standard or a US standard of obviousness or anticipation what the rejections actually are. In fact, based on the translation of Valeo's response to the opposition, it is very clear to the examiner that Valeo's attorney (Sebastien Vieilleigne) clearly understood the rejections as set forth. The examiner submits that persons of ordinary skill in the art would clearly understand the rejections set forth notwithstanding that they do not use conventional phraseology as found in US practice.

As discussed with US counsel in a personal interview with US counsel, the approach taken by this examiner will very likely save applicants the expense of a potential reexamination. By incorporating the rejections set forth in Behr's opposition here, the likelihood of a later reexamination (once a patent issues) by Behr (at least on the prior art relied upon in the opposition), is very likely almost nonexistent.

Rejection 1

Claims 1, 4 and 8 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over D11 (FR 2637548).

To explain this rejection, the relevant section of the 12 page translation of "Annex 1" of the Behr opposition in the EPO is incorporated here by reference. All references made to references prefaced by the letter "D" (e.g. D1, D2, D3 D12) correspond to the nomenclature set forth in the aforementioned opposition.

Rejection 2

Claims 1, 4, 8 and 22 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over D10 (EP 0458705).

To explain this rejection, the relevant section of the 12 page translation of "Annex 1" of the Behr opposition in the EPO is incorporated here by reference. All references

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made to references prefaced by the letter “D” (e.g. D1, D2, D3 D12) correspond to the nomenclature set forth in the aforementioned opposition.

Rejection 3

Claims 1, 4 and 8 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over D3 (FR 2735426).

To explain this rejection, the relevant section of the 12 page translation of “Annex 1” of the Behr opposition in the EPO is incorporated here by reference. All references made to references prefaced by the letter “D” (e.g. D1, D2, D3 D12) correspond to the nomenclature set forth in the aforementioned opposition.

Rejection 4

Claims 1, 4 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over D5 (DE 10042683) in view of D7 (DE 19626441) or D12 (EP 0357801).

To explain this rejection, the relevant section of the 12 page translation of “Annex 1” of the Behr opposition in the EPO is incorporated here by reference. All references made to references prefaced by the letter “D” (e.g. D1, D2, D3 D12) correspond to the nomenclature set forth in the aforementioned opposition.

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Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over any one of the prior rejections of as applied to claim 1 above, and further in view of D7 (Figs. 1 and 6), D11 (Fig. 2, page 5, lines 1-2) or D12 (Fig. 6).

To have used two laterally arranged distribution modules as taught by any one of D7, D11 or D12 in any of the prior art used in rejections 1, 2, 3 or 4 above would have been obvious to one of ordinary skill in the art to improve occupant comfort by conditioning both sides of the vehicle compartment.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over any one of the prior rejections of as applied to claim 1 above, and further in view of any one of D1 (element 16), D2 (element 24), D4 (element 28), D5 (element 2), D6 (element (14) or D10 (element 1) and switching means are disclosed in D5 (at 11) or in D6 (at 20, 22).

To have used a ventilation module of with a construction as disclosed in any one of D1 (element 16), D2 (element 24), D4 (element 28), D5 (element 2), D6 (element (14) or D10 (element 1) and switching means are disclosed in D5 (at 11) or in D6 (at 20, 22) in any of the prior art used in rejections 1, 2, 3 or 4 above would have been obvious to one of ordinary skill in the art to improve occupant comfort by forcefully impelling the air and allowing both recirculated and fresh air to flow.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over any one of the prior rejections of as applied to claim 1 above, and further in view of D3 page 6, lines 18-21 and D12, Figures 2 and 4.

To have oriented the claimed elements in the heating module in the manner disclosed by D3 page 6, lines 18-21 and D12, Figures 2 and 4 in any of the prior art used in rejections 1, 2, 3 or 4 above would have been obvious to one of ordinary skill in the art to advantageously diminish the amount of lateral space taken up by the heating module.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over any one of the prior rejections of as applied to claim 1 above, and further in view of D9.

To have placed an electric heater next to and parallel to the coolant heater in any of the prior art used in rejections 1, 2, 3 or 4 above would have been obvious to one of ordinary skill in the art to advantageously heat the compartment faster during very cold weather.

Claims 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over any one of the prior rejections of as applied to claim 1 above, and further in view of D8 or D6 or JP 06-183248.

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To have used an adjusting means as taught by D8 or D6 or JP '248 in any of the prior art used in rejections 1, 2, 3 or 4 above would have been obvious to one of ordinary skill in the art to advantageously allow the occupants to separately select a temperature air suitable to each of them at the respective discharge port into the compartment.

Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over any one of the prior rejections of as applied to claim 1 above, and further in view of D10 (Figure 2).

As stated in the opposition, these are all **conventional** discharge locations/apertures and would have been obvious to have used in prior art used in rejections 1, 2, 3 or 4 above (if not already disclosed there) to distribute air to where the occupants desire it.

Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over the combined teachings of JP 2001-180251 and JP 2000-62438.

JP '251 shows a ventilation module 31, a heating module 32, and at least one distribution module 33. The ventilation module 31, a heating module 32, and at least one distribution module 33 are arranged at substantially the same horizontal level. The heating module contains a plurality of heat exchangers (50 and 51) and two side outlets

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(one to the right of port 32c and one to the left of port 32c) connected to the heating module. The inlet to the heating module is located at a lower portion thereof and the evaporator 50 and heater 51 are located as claimed in claim 30.

To have arranged conventional distribution means such as louver units 50 and 60 of JP '438 to each of the distribution modules 33 of JP '251 to allow the occupants of the vehicle to advantageously turn off or deflect the air flow would have been obvious to one of ordinary skill in the art.

The examiner's response to the arguments made in the March 24, 2011 response.

On pages 11-12 of the March 24, 2011 response applicant argues that the term "grouped substantially at the same horizontal level" is definite in independent claims 1 and 30. The examiner disagrees for the reasons articulated above. The assertion that "grouped substantially at the same horizontal level" is really another way of saying "installed essentially in a transverse direction (Y axis) of the vehicle" is equally ambiguous as the claim phrase as well as inconsistent with applicant's representations that the vehicle forms no part of the claimed combination.

On pages 12-13 of the March 24, 2011 response applicant argues that reference D11 (FR 2637548) is not modular and does not show the variously recited modules "grouped substantially at the same horizontal level." The examiner has already

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addressed the second point in the 35 USC 112, second paragraph rejection set forth above. It is precisely this kind of argument by applicant that highlights what is wrong with a vague limitation such as “grouped substantially at the same horizontal level”. It is essentially an invitation to a lawsuit to decide what it means. As well the term “modular” is extremely broad and claims are given their broadest reasonable interpretation when reviewed by the patent office. Where in applicant’s claims does it state that the term “module” cannot be construed to include a construction such as shown by D11 where certain portions (deemed to be modules) of the structure perform the functions of ventilation, heating and distribution? The argument is incommensurate with the scope of the claims.

On pages 13-14 of the March 24, 2011 response applicant argues that reference D10 fails to disclose a heating module. Applicant fails to explain why 15 and the heater within it is not a heating module. Where in applicant’s claims does it state that the term “module” cannot be construed to include a construction such as shown by D10 where certain portions (deemed to be modules) of the structure perform the functions of ventilation, heating and distribution? The argument is incommensurate with the scope of the claims.

On pages 13-14 of the March 24, 2011 response applicant argues that reference D3 is inapplicable because the names of some of the components in the reference do not exactly correspond to the names that applicant uses. This kind of semantic

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argument is simply not convincing. Where in applicant's claims does it state that the term "module" cannot be construed to include a construction such as shown by D3 where certain portions (deemed to be modules) of the structure perform the functions of ventilation, heating and distribution? The argument is incommensurate with the scope of the claims.

On pages 15-16 of the March 24, 2011 response applicant argues that reference D5 in view of D7 or D12 does not render the claimed subject matter obvious. Here applicant adds the word "independent" in front of module (whatever that is supposed to mean) as a way of attempting to distinguish the present claims from this prior art. Where in applicant's claims does it state that the term "module" cannot be construed to include a construction such as shown by D5 in view of D7 or D12 where certain portions (deemed to be modules) of the structure perform the functions of ventilation, heating and distribution? The argument is incommensurate with the scope of the claims. There is nothing in the claims that corresponds to the narrowing language (bolded by applicant on page 16 of the March 24, 2011 response) which applicant argues makes the claims patentable. Again, the argument is incommensurate with the scope of the claims.

On page 17 of the March 24, 2011 response applicant argues that the combined teachings of JP '251 and JP '438 do not render claim 30 obvious. Applicant argues that the modules that are clearly disclosed in these references are not "grouped substantially at the same horizontal level." The examiner has already addressed the second point in

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the 35 USC 112, second paragraph rejection set forth above. It is precisely this kind of argument by applicant that highlights what is wrong with a vague limitation such as “grouped substantially at the same horizontal level”. It is essentially an invitation to a lawsuit to decide what it means. Moreover, applicant’s argument that the top side of a box shaped housing cannot be read as a “side” of that box shaped housing is not commensurate with the scope of the claim. Nothing in claim 30 sets any limitation on where such a “side” can be located.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to John K. Ford whose telephone number is 571-272-4911. The examiner can normally be reached on Mon.-Fri. 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frantz Jules can be reached on 571-272-4834. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/John K. Ford/
Primary Examiner, Art Unit 3784